

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AMIE TAN,

Plaintiff,

vs.

WELLS FARGO BANK, AS TRUSTEE FOR
THE STRUCTURED ASSET SECURITIES
CORP. MORTGAGE PASS-THROUGH
CERTIFICATES 2006-OPTI; AMERICAN
HOME MORTGAGE SERVICING, INC.;
POWER DEFAULT SERVICES, INC.;
OPTION ONE MORTGAGE CORP.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, DOES 1-20,
inclusive,

Defendants.

Case No: C 10-3773 SBA

ORDER DISMISSING ACTION

Plaintiff filed the instant mortgage fraud action in state court on June 29, 2010. On August 25, 2010, Defendants American Home Mortgage Servicing, Inc., Power Default Services, Inc., and Wells Fargo Bank, as Trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-OPTI (“Defendants”) removed the action to this Court, and filed a motion to dismiss on September 1, 2010.¹ Dkts. 1, 9. A

¹ There is no indication in the record that the remaining Defendants, Option One Mortgage Corp. and Mortgage Electronic Registration Systems, have been served in this action, nor have they filed any responsive pleading or otherwise made an appearance.

1 hearing on Defendants' motion to dismiss is scheduled for November 2, 2010. Under Civil
2 Local Rule 7-3(a), any opposition or statement of non-opposition was due by October 12, 2010,
3 which is twenty-one days prior to the hearing date. Plaintiff did not respond to Defendants'
4 motion.

5 Rule 41(b) authorizes the Court to dismiss an action where a plaintiff has failed to
6 comply with the Federal Rules of Civil Procedure, the Court's local rules or any court order.
7 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). Pursuant to this authority, the Ninth
8 Circuit has held that the failure to file an opposition to a motion to dismiss in contravention of
9 the local rules or court order is grounds for granting the motion. Ghazali v. Moran, 46 F.3d 52,
10 53 (9th Cir. 1995) (per curiam). In Ghazali, the Ninth Circuit held that in exercising its
11 discretion to dismiss an action for failing to comply with a district court's local rules or orders,
12 the court is "required to weigh several factors: '(1) the public's interest in expeditious
13 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
14 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
15 availability of less drastic sanctions.'" Id. (quoting Henderson v. Duncan, 779 F.2d 1421, 1423
16 (9th Cir. 1986)). Upon balancing the Ghazali factors under the facts of this case, the Court
17 finds that dismissal is warranted.

18 The first and second factors both favor dismissal. Under Local Rule 7-3, Plaintiff was
19 obligated to file her opposition to Defendants' motion to dismiss by no later than October 5,
20 2010. In violation of that rule, she failed to do so. Plaintiff's failure to comport with Court's
21 filing requirements undermine the Court's ability to expedite the resolution of the action. Such
22 non-compliance inherently delays resolution of the case and insures to the detriment of the
23 public. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) ("It is incumbent upon the
24 Court to manage its docket without being subject to routine noncompliance of litigants");
25 Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing court's need to
26 control its own docket).

27 The third factor, the risk of prejudice to the defendant, is related to the strength of the
28 plaintiff's excuse for the default, if any. See Yourish, 191 F.3d at 991. Here, Plaintiff has

1 offered no “excuse” for her non-compliance, nor is any apparent from the record. Moreover,
2 the Court has received no filing from Plaintiff since this action was removed. These facts also
3 weigh strongly in favor of dismissal. Id.; Ghazali, 46 F.3d. at 54.

4 The fourth factor favoring disposition of cases on the merits, by definition, weighs
5 against dismissal. Pagtalunan, 291 F.3d at 643 (“Public policy favors disposition of cases on
6 the merits. Thus, this factor weighs against dismissal”).

7 Finally, the Court’s Standing Order expressly warns that the “failure of the opposing
8 party to file a memorandum of points and authorities in opposition to any motion shall
9 constitute a consent to the granting of the motion.” Civil Standing Order at 4. See Brydges v.
10 Lewis, 18 F.3d 651, 653 (9th Cir. 1994) (“We conclude that because Brydges was warned of
11 the consequence of his failure to respond to the appellees’ summary judgment motion, the
12 district court did not err by deeming his failure to respond a consent to the motion for summary
13 judgment”).

14 In sum, weighing the relevant factors, the Court exercises its discretion and grants
15 Defendants’ motion to dismiss.

16 Accordingly,

17 IT IS HEREBY ORDERED THAT:

- 18 1. Defendants’ Motion to Dismiss (Dkt. 9) is GRANTED.
19 2. The hearing scheduled for November 2, 2010 is VACATED.
20 3. The Clerk shall close the file and terminate any pending matters.

21 IT IS SO ORDERED.

22 Dated: October 22, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

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28 UNITED STATES DISTRICT COURT

1 FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA

3 AMIE TAN et al,

4 Plaintiff,

5 v.

6 WELLS FARGO BANK et al,

7 Defendant.
8 _____/

9 Case Number: CV10-03773 SBA

10 **CERTIFICATE OF SERVICE**

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17 Allen Tan
18 No. 3 Dow Court
19 Alameda, CA 94501

20 Amie Tan
21 No 3. Dow Court
22 Alameda, CA 94501

23 Dated: October 22, 2010

24 Richard W. Wieking, Clerk

25 By: LISA R CLARK, Deputy Clerk
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